IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18867 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHUBHAI AMBABHAI PATEL - Petitioner(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MRS HANSA PUNANI, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 27/10/2005

ORAL JUDGMENT

1.This petition under Article 226 of the Constitution of India challenges the order dated 03.09.2005 passed by the Police Commissioner, respondent No. 2 herein detaining the petitioner as a bootlegger as defined

under Section 2(b) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), as violative of Articles 14, 19, 21 & 22 of the Constitution of India.

2. The grounds supplied alongwith the order of detention dated 03.09.2004 reveal registration of C.R. No. 765/05 dated 26.08.2005 for the offences punishable under Sections 66(1)B, 65-A,E, 116 B, & Section 81 of the Bombay Prohibition Act, 1949. The detaining authority has considered inadequacy of other remedies under ordinary law and ultimately, it was found that to prevent the illegal and prejudicial activities of the detenue, it has become imperative for the authorities to exercise powers under the Act, since the said activities are affecting the public order and the general health of the public.

3. The learned advocate Shri H.R. Prajapati appearing for the petitioner has confined his arguments on the ground that the alleged offence registered against the detenue cannot be said to be the cause of disturbing the public order or general health of the public or in any circumstances prejudicial and have potential to disturb

the even tempo of public life and/or general health of the public. According to him, no relevant materials did exist before the detaining authority while passing the order of detention and therefore the subjective satisfaction of the authority, solely relies on the offences of solitary nature registered against the petitioner and not on the basis of relevant or credible material and therefore of detention dated 03.09.2005 requires to be quashed and set aside.

4. The learned advocate appearing for the petitioner has challenged the order of detention on the ground that the concerned authority has relied on to the solitary offence registered at Umra Police Station under various provisions of Bombay Prohibition Act, 1949. According to the learned Advocate, registration of crime by itself is not relevant and sufficient material, which may lead to disturbance of public order. At the most, it can be a question of law and order. He has submitted that the activities alleged to have been carried out by the detenue, cannot be said to be so grave, which disturbs even tempo of normal social life and in the circumstances, the subjective satisfaction of the detaining authority stands vitiated and

therefore the order of detention requires to be quashed and set aside. In support of his arguments, he has relied on various decisions of the Apex Court and this Court **viz. decision of the Division Bench in LPA No. 223/2000 reported in AIR 1989 SC 491 in the case of Piyush Kantilal Mehta; in the case of Sohanlal Surajaram Visnoi Vs. State of Gujarat & Ors. reported in 2004(2) GLR 1051** and the decision of this Court **dated 30.08.2005 in the case of Natwarbhai Jaswantlal Rana Vs. State of Gujarat & Ors. in SCA No. 14030 of 2005** and submitted that in the facts of the present case, the ratio laid by the aforesaid decisions are clearly applicable.

5. The learned Asst. Govt. Pleader, Ms. Hansa Punani submitted and supported the order of detention and according to her, the order of detention is passed on the basis of sufficient materials, as existed before the detaining authority and in the given case, solitary offence may also lead to disturbance of public order.

6. Having considered the rival submissions, perused the relevant records of the case, it is evident that there is a registration of solitary offence punishable under

various sections of the Bombay Prohibition Act, 1949. It is pertinent to note that though it is stated in the order, though it is also stated in the grounds supplied alongwith the order of detention to the detenue and about the prejudicial activities of the detenue indulging into bootlegging and thus, disturbing the public order and public health, there appears to be absence of any connecting relevant materials by which it can be concluded that the activities of the detenue as a bootlegger have a potential or gravity to disturb even tempo of public life or normal life. Simply registration of solitary offence and seizure of bottles of IMFL, by itself cannot lead to a presumption that general health of the public is also likely to be affected. In absence of the materials for arriving at such subjective satisfaction about the prejudicial activities of the detenue disturbing the public order and general health of the public and further to assume about preferring bail application by the detenue and grant of such bail application by the competent court of law and further that the detenue to continue in such activities on the order of bail, all will have to be based on relevant and credible materials and in the present case when the detenue is already released on bail, conclusion of the detaining authority about

indulgence of the petitioner in similar antisocial activities in future, and to pass the order of detention is a case of subjective satisfaction being vitiated on the ground of non-application of mind on the part of the detaining authority to such aspects and on this ground also, impugned order requires to be quashed and set aside.

7. That registration of solitary offence for the offences punishable under the Bombay Prohibition Act, 1949 by itself cannot be said to have bearing or nexus on the disturbance of the public order or the general health of the public and, therefore, the decision reported in the case of **Darpan Kumar Sharma Vs. State of T.N.,** reported in 2003 (2) SCC 313 is applicable in the facts of the present case particularly para-5 which reads as under:-

> "5. The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1,000. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent, affect the peace prevailing in the locality and it may also affect law and order, but the same need not affect maintenance of public order. Under the definitions in the Act, it is stated that in the case of "goonda" the acts prejudicial to

public order are “when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order”

The important question considered by the Supreme Court “ whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order” is very well explained in the decision reported in 2000 (4) GLR 3623 in the case of **Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Ors.** as under:-

“ Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or the same amounted to breach of law and order. The fall-out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society.”

8.As rightly submitted by the learned advocate for the petitioner, the decision reported in Letters Patent Appeal No.223/2000, decision reported in the case of **Darpan Kumar Sharma Vs. State of T.N.,** reported in 2003 (2) SCC 313 AIR as held by the Apex Court and our High Court, the registration of solitary offence can not have effect of disturbing the public order or general health of public except the specific materials on the basis of which reliance is placed by the detaining authority for passing the order, and, therefore, the order of detention dated 03.09.2005 passed by the Police Commissioner, Surat, respondent no.2 herein, is quashed and set aside.

9.In view of the above, the detenue viz. Madhubhai Ambabhai Patel is ordered to be set at liberty forthwith, if not required in connection with any other case by any other authority. Rule is made absolute with no order as to costs.

(Anant S. Dave, J.)

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